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**House Bills 4206-9 (H-2 Draft 2)**

**Topic:** Building Official Conflict of Interest  
**Sponsor:** Representative Stakoe  
**Co-Sponsors:** None listed  
**Committee:** House Local Government and Urban Policy

**Date Introduced:** February 3, 2005

**Date Enrolled:**

**Date of Analysis:** February 7, 2005

**Position:** The Department of Labor & Economic Growth does not support the bills.

**Problem/Background:** Section 10 of the Building Officials and Inspectors Registration Act prohibits an inspector from inspecting his or her own work in a governmental subdivision. Performing instructional duties for educational purposes and providing contractual inspection and consulting services in construction code enforcement are specifically exempted from the conflict of interest provision. Section 10 permits a local government to establish additional requirements and restrictions in the selection and hiring of enforcement officials. The Electrical Administrative Act and the Forbes Mechanical Contractors Act do not directly address this issue. Both of these statutes preceded the building officials and inspectors registration law. The rewrite of the State Plumbing Law in 2002 contained a strong conflict of interest provisions.

**Description of Bill:** House Bill 4206 amends Section 10 of the Building Officials and Inspectors Registration Act. The other bills amend the State Plumbing Act, the Electrical Administrative Act, and the Forbes Mechanical Contractors Act by inserting language referring to Section 10 of the Building Officials and Inspectors Registration Act.

The new language in House Bill 4206 prohibits conflict of interest and defines conflict of interest as the following:

- A registered building official is directly or indirectly connected with a business entity providing services on any project within the governmental subdivision in which he or she is employed or acting as an inspector, plan reviewer, or building official regarding that business.
- A registered building official has an interest directly or indirectly in any written or verbal contract affecting the construction of any building or structure or the furnishing of

materials, appliances, equipment, or labor affecting the construction of the building or structure.

- A registered building official has a personal ownership interest in all, or a portion of, the business entity performing the work in the construction of a building or structure for which the registrant is making decisions in the administration and enforcement of codes or standards.
- A registered building official conducts inspections in a construction project in which the registrant or the business entity employing him or her sought work.
- A registered building official who supervises other inspectors, plan reviewers, or building officials holds an interest directly or indirectly in a business entity performing construction work within the official's governmental subdivision.
- In cases where a registered building official engages in building, electrical, mechanical, or plumbing activities in a governmental subdivision other than the employing governmental subdivision, engaging in an action or inaction in his or her capacity as a building official that appears to result in retaliation, harassment, or selective enforcement of code provisions against a competitor.
- Any other action or inaction taken by a building official that affects the integrity of the code enforcement and administration that could reasonably be considered a conflict of interest by the enforcing agency.

The bill requires an enforcing agency to report to the chief elected official a claim of conflict of interest within 30 days after it is reported to or identified by the enforcing agency. The chief elected official is required to conduct an investigation and file a report of its findings with the Bureau of Construction Codes and Fire Safety within 30 days after receiving the report.

If the enforcing agency's investigation determines a conflict of interest, it is required to remove the registrant from responsibility for administration and enforcement of the code on the specific project in which a conflict of interest has been determined.

Upon receipt of information that an enforcing agency has failed to investigate a facially valid conflict of interest claim or has failed to take appropriate action, the Bureau of Construction Codes is required to conduct a performance evaluation of the enforcing agency and report its findings in writing to the State Construction Code Commission. The bill allows a person to file a complaint with the bureau requesting a performance evaluation if he or she believes the enforcing agency has failed to investigate or take the appropriate action. The complaint must be facially valid. A person who brings a claim that is determined to be frivolous is subject to prosecution for a state civil infraction and may be ordered to pay a fine of not more than \$500. The prevailing party will be awarded any costs associated with the bringing or defense of a claim. "Frivolous" is defined as a claim determined by a court to have been brought for the primary purpose of harassing, embarrassing, or injuring the registered building official or to have had no reasonable basis for belief that the underlying facts were in fact true, or both.

The bills are tie-barred.

## **Summary of Arguments**

**Pro:** Construction Code Inspectors are currently allowed to be employed simultaneously as both construction contractors/workers and governmental construction code inspectors. This creates a situation where construction code inspectors are competing with licensed contractors whom they also regulate. Such situations contribute to accusations of conflict of interest against inspectors who appear to be in a favorable regulatory position: first, with respect to the capability to retaliate and find fault with the work of their competitors, and, second, with respect to the rigorousness of the evaluation of the inspector's construction work by other code officials.

The current requirement in 1986 PA 54 prohibits an inspector from inspecting the work that he/she performs on construction projects. This standard does not go far enough and does not address the potential conflict of interest issue regarding code officials competing with the contractors they regulate.

**Con:** The original bill was preferable to the department. The phrase "within the governmental unit" in subsection 5 (a) is a concern. Subsection 5 (f) tries to respond to concerns expressed by the department regarding conflict of interest arising out of an inspector's working in the regulated industry in another governmental subdivision. The inclusion of actions or inactions "against a competitor that appears to result in retaliation, harassment, or selective enforcement of code provisions against that competitor" is too subjective. Although the language in the original bill may have seemed to be difficult for smaller enforcing jurisdictions, it was clear and enforceable. You were either an inspector or in the industry, but you couldn't be both. Subsection 5 (g) also tries to respond to the department's concerns. It is broadly written to include "any other action or inaction taken by a building official that affects the integrity of the code enforcement and administration that could reasonably be considered a conflict of interest. The department is concerned that the language is so broad as to be unenforceable.

The frivolous claim language will have a chilling effect on claims. Those most affected by a building official's work are builders and contractors. Fear of retribution already serves as a significant disincentive for filing complaints against a building official's actions under current law. Adding a possible civil fine and a requirement that the prevailing party is awarded costs associated with bring or defending the claim will discourage anyone from filing a complaint against a building official.

The bill may impose a hardship on smaller communities where there is insufficient building activity to justify hiring a full time inspector.

*Response: Options are available for these communities. These include hiring a retired inspector, collaborating with nearby jurisdictions, or hiring inspection services from a private firm.*

## **Fiscal/Economic Impact**

### **(a) Department**

**Budgetary:** No budgetary impact to the department is anticipated.

**Revenue:** The bill will have no revenue impact on the department.

**Comments:**

**(b) State**

**Budgetary:** No budgetary impact on the State is anticipated.

**Revenue:** State revenues will not be affected.

**Comments:**

**(c) Local Government**

**Comments:** No direct financial impact on local governments is anticipated.

**Other State Departments:** No other state departments will be affected.

**Any Other Pertinent Information:** These bills are the outcome of discussions in 2004 between the bill sponsor, DLEG, and various stakeholders. Representative Stakoe introduced 5062 to clarify language in the new State Plumbing Law related to conflict of interest.

**Administrative Rules Impact:** New or revised administrative rules should not be required.